

## REMARKS

After entry of the amendments presented herein, claims 11, 14, 16-19, 22, 41, 43, and 45-50 are pending in the application. In view of the amendments and remarks set forth herein, Applicants respectfully request allowance of all pending claims.

**35 U.S.C. 103 Rejections**

Claims 11, 16-19, 22, 41, 43, 45 and 47-50 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Re. 33, 465, issued to Eby, in view of ES 2095183, Pereswetoff-Morath et al., and HCAPLUS abstract 1994:638216 in further view of DE 3431727. Applicants respectfully request reconsideration and withdrawal of this rejection.

Eby discloses a method to reduce a duration of common colds through use of zinc topically applied to the oral mucosa. Although the reference discloses that various forms of applying the composition may be used (e.g., applying the composition to an oral, pharyngeal and/or nasal mucosa), the examples in the reference as well as the claims are exclusively directed to application of a zinc lozenge or table to the oral mucosa. Eby does not teach or suggest *any* formulations for or methods of application of a composition to a nasal membrane.

Eby further teaches that prior-art intranasal compositions were ineffective “perhaps because natural circulation removes zinc ions from the locus of the treatment more rapidly than the low application rate of zinc ions by the dosage replaces them.” To overcome this deficiency in the prior art, Eby’s method includes continuing application of a zinc tablet or lozenge until the symptoms have been absent for six hours. In other words, the reference does not suggest any composition that maintains contact with an oral, pharyngeal and/or nasal mucosa for an extended period of time, but rather suggests repeated application of the composition, not only for the duration of time that the symptoms persist, but until the symptoms have been absent for the six hours.

Eby fails to teach zinc gel compositions and fails to teach or suggest *any* of the limitations in claim 11, from which claims 16-19, 22, 41, 43, 45 and 47-50 depend. The Examiner relies on ES 2095183, Pereswetoff-Morath et al. and HCAPLUS abstract 1994:638216

for compositions that adhere to the nasal mucosa, and more particularly for compositions that include (or purportedly suggest) the claimed thickeners and other components. Applicants disagree with this reasoning.

As noted above, to overcome the shortcomings of the prior art, Eby teaches frequent and repeated application of the composition until beyond the time the symptoms have been absent for a prescribed period of time. Thus, Eby does not suggest to one skilled in the art would to look at ES 2095183, Pereswetoff-Morath et al. and HCAPLUS abstract 1994:638216 to modify the composition of Eby to include a gel composition of ES 2095183, Pereswetoff-Morath et al. and HCAPLUS abstract 1994:638216. Applicants further note that the publication date of ES 2095183 Pereswetoff-Morath et al. and HCAPLUS abstract 1994:638216 are all more than a decade after the filing date of Eby.

In addition, Applicants submit that no combination of the references teaches or suggests several of the claim limitations. For example, no combination of the references teaches or suggests “wherein the composition comprises about 0.000001 % to about 5 wt% thickening agent selected from the group consisting of carrageenan, sugar, guar gum, hydroxycellulose, methylcellulose, and hydroxyethylcellulose” as set forth in the claims. Accordingly, Applicants request reconsideration and withdrawal of this rejection.

Claims 11, 16-19, 22, 41, 43, and 45-50 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Eby in view of ES 2095183, Pereswetoff-Morath et al., and HCAPLUS abstract 1994:638216 in further view of DE 3431727 and Dickstein (United States Patent No. 5,376,365). Applicants respectfully request reconsideration and withdrawal of this rejection

As noted above, Eby fails to teach each of the limitations set forth in claim 11, from which all the other claims depend. The addition of ES 2095183, Pereswetoff-Morath et al., and HCAPLUS abstract 1994:638216 does not cure the defect with regard to the thickening agent, since none of the reference teach or suggest any of the listed thickeners.

Dickstein discloses a composition that includes a non-Newtonian gel-forming agent in the presence of a strong moisturizer, such as glycerin. The non-Newtonian gel is advantageously formed from a neutralized anionic polymer, such as Carbopol 940. Nowhere does Dickstein

teach or suggest any of the thickening agents set forth in the pending claims. Thus, no combination of the references teaches or suggests the claimed invention. Applicants therefore request reconsideration and withdrawal of this rejection to claims 11, 16-19, 22, 41, 43, and 45-50.

### **Non-Statutory Double Patenting**

Various claims stand rejected on the ground of nonstatutory obvious-type double patenting. Applicants request reconsideration of these rejections in view of the claim amendments set forth herein.

Applicants note that claim 14 was rejected only under nonstatutory obvious-type double patenting grounds. Applicants therefore specifically request allowance of claim 14.

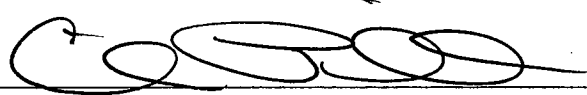
### **CONCLUSION**

In view of the foregoing remarks, Applicants believe that the pending claims are allowable over the cited art and Applicants therefore earnestly request allowance of all pending claims. The undersigned requests a telephone call at the telephone number listed below if, for any reason, the Examiner deems one or more of the pending claims unpatentable.

Applicants authorize and respectfully request that any extension of time fees due be charged to Deposit Account No. 19-2814. **This statement does NOT authorize charge of the issue fee.**

Respectfully submitted,

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